

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

W. Robb Graham

(b) County of Residence of First Listed Plaintiff Burlington

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Law Offices of W. Robb Graham, LLC
803 Route 130 South
Cinnaminson, NJ 08077

DEFENDANTS

Department of Veterans Affairs

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 U.S.C. § 552

Brief description of cause:

Department of Veterans Affairs has not responded to FOIA request.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation:

DATE

09/17/2009

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Provide a brief explanation of why the cases are related.

Date and Attorney Signature. Date and sign the civil cover sheet.

LAW OFFICES OF W. ROBB GRAHAM, LLC
803 Route 130 South
Cinnaminson, New Jersey 08077
(856) 786-5050 Fax (856) 786-5271
Attorney for Plaintiff W. Robb Graham

W. Robb Graham

Plaintiff

v.

Department of Veterans Affairs,

Defendant

**United States District Court for
the District of New Jersey**

Civil Action #:

Complaint

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for injunctive and other appropriate relief. Plaintiff seeks the release of records that Plaintiff requested from Defendant, Department of Veterans Affairs, concerning the employment status of the medical care providers who provided brachytherapy and radiation treatments to one of plaintiff's clients at the Philadelphia Veterans Administration Medical Center, 3900 Woodlane Avenue, Philadelphia, PA, in order to determine whether or not plaintiff's client should

pursue remedies under the Federal Tort Claims Act, against United States, or file suit against the health care providers as individuals. Despite the Department of Veterans Affairs' representations that they have notified all of the affected veterans as to their legal rights, in accordance with the Department of Veterans Affairs' policy for disclosing adverse events, the Department of Veterans Affairs has not responded to plaintiff's FOIA request, which is necessary to determine Rev. Flippin's potential legal remedies.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff W. Robb Graham, is an attorney licensed to practice law in the State of New Jersey and Commonwealth of Pennsylvania, and maintains an office for the practice of law, located at 803 Route 130 South, Cinnaminson, New Jersey, and represents Rev. Flippin, a veteran, in connection with his claims as result of the brachytherapy treatment that he received at the Philadelphia VA. In an

effort to determine whether the medical providers were federal employees acting within the scope of their employment at the time that they provided improper medical care to Rev. Flippin, plaintiff sent a Freedom of Information Act Request dated July 27, 2009, via certified mail, which the defendant received on August 14, 2009.

4. The defendant, Department of Veterans Affairs, is a cabinet level agency of the United States of America with its principal place of business located at 810 Vermont Avenue, NW, Washington. DC.

5. The Department of Veterans Affairs has had numerous problems with the brachytherapy program at the Philadelphia VA, which have been well publicized. The Department of Veterans Affairs has been aware of these problems and has been investigating them, since May of 2008. The VA's own web site confirms this:

Investigating Brachytherapy Treatments in Philadelphia

In May 2008, the Philadelphia VA Medical Center discovered irregularities involving either under-dosing or incorrect dosing of patients undergoing brachytherapy treatment. VA suspended the program while we investigated the situation. Independent, external physicians and physicists conducted examinations of patient scans, dosages, and medical records and identified 92 events.

It is VA's policy to actively seek out quality problems, discuss them openly, and find solutions. VA informed and treated all affected Veterans. Our outreach included certified letters, calls to these veterans and a toll-free number to address questions or concerns. VA is covering all costs associated with additional tests while continuing to monitor the affected Veterans' care at other VA and private facilities. <http://www1.va.gov/health/prostate.asp>

6. On July 2, 2008, Richard Citron, MD, the Director of the Philadelphia VA Medical Center advised Rev. Flippin that he was one of the veterans affected and that he should contact a member of his staff for information on making a claim:

Additionally, we can provide you with information regarding administrative claims and claims for benefits that are available to you if you believe you were harmed by your radiation therapy. For more information, please contact **Sue Kirlin**, RN at 800-949-1001 extension 6338.

(Exhibit 1)

7. On August 15, 2008, Richard Citron, MD, the Director of the Philadelphia VA Medical Center advised Rev. Flippin that the treatment that he received did not in fact meet the VA's standard of care and provided Rev. Flippin with information concerning making a claim:

Included in this packet is information regarding the filing of administrative claims and benefits for which you may be eligible. If you have questions about the benefits or claims, please call Sue Kirlin, RN, Risk Manager, at (215) 823-6338 or toll free at (800) 949-1001, extension 6338 or 6022.

(Exhibit 2)

8. The VA notified Rev. Flippin of the option of filing for § 1151 benefits or under the Federal Tort Claims Act, but did not notify him that any of the health care workers that provided care to him were “independent contractors” and that he might have to file a law suit against the medical care providers and the provider’s employers in state court, which would be subject to a different statute of limitations, which would not be tolled by filing any of the enclosed documents.

9. Another veteran provided the plaintiff with a copy of the correspondence sent out by the Philadelphia VA’s Risk manager(Exhibit 3) which included instructions on filing a claim, (Exhibit 4)as well as a pamphlet that he received from the Philadelphia VA,. The pamphlet titled “Information For Our Patients And Their Families Answers To Questions About Financial Compensation After An Injury” hints at, but does not either confirm, nor deny, the fact that contract workers may be involved:

What if a contract physician provided the medical care that caused injury?

You can still file a *benefits claim* provided the injury occurred on VA property. A *tort claim* would not be successful because the provider was not an employee of the Government. You could file a medical malpractice action against the provider in state court following the state malpractice rules. You may want to seek legal advice from an attorney.

Contact Information

BENEFIT CLAIMS:

(VBA) Regional Offices

Philadelphia:

5000 Wissahickon Avenue

Philadelphia, PA 19101

1-800-827-1000

Delaware:

1601 Kirkwood Highway

Building 13

Wilmington, DE 19801

1-800-827-1000

TORT CLAIMS:

Veterans Affairs

Regional Counsel (642-02)

3900 Woodland Avenue

Philadelphia, PA 19104

215-823-7821

PVAMC VSO OFFICE: (Call for hours)

Room # A 121

215-823-5800 x 2080/ 2229

10. The VA has conducted several internal investigations into this program and, the Philadelphia VA's brachytherapy program was the subject of a Senate hearing which was conducted at the Philadelphia VA on June 29, 2009 and another hearing conducted by the House of Representatives on July 22, 2009, and

has had ample opportunity to determine the employment status of the medical care providers involved with this.

11. On June 29, 2009 the Undersecretary for Health at the Department of Veterans Affairs Gerald Cross submitted prepared remarks to the Senate indicating:

...The staff at the Philadelphia VAMC discovered the problem of possible under-dosing and incorrect dosage of patients in May 2008, and the VA medical center director did not hesitate to immediately suspend the program and convene an Administrative Board of Investigation to uncover the facts. We informed and treated all affected Veterans and promptly suspended the program. The VA National Director of Radiation Oncology is continuing to investigate the reasons why these problems were not detected earlier...

...During this review, it was discovered that 92 events involving under-dosing or doses to organs or tissues other than the treatment site were found that met the definition of a medical event according to the NRC. VA has regularly informed the NRC of any updates. It is important to highlight for these additional cases that the definition of "medical event" does not necessarily mean Veterans were harmed, and experts still debate the long-term impact of this treatment. Nonetheless, VA took the conservative approach of notifying these Veterans because we did not deliver a treatment as promised.

On July 2, 2008, the Philadelphia VAMC issued a press release and notified local members of Congress and Veterans Service Organizations. The facility also took proactive steps to contact each of the 114 Veterans who underwent brachytherapy at the VAMC from 2002 (when the program started) to 2008, whether they experienced a medical event or not. VA sent each Veteran a certified letter and called each Veteran or the Veteran's family directly. We also established a toll-free telephone number to answer

questions. VA is covering all costs associated with additional tests and continuing to monitor their care at other VA and private facilities.

<http://www.va.gov/OCA/testimony/svac/090629GC.asp>

12. During the question and answer session at the Senate Hearing, Under Secretary Cross testified:

- a.There is in fact something in fact unique in the situation at Philadelphia and I think more so than we would find at other locations and that's the nature of the contract and the nature of the relationship and the nature of the contract with the university. My review of this program, it virtually impossible to determine where the university ends and the VA begins.
- b.That arrangement I think, was part of the problem. We value tremendously our relationships with their university affiliates, but in this case there was a contract and the contract had in my experience some rather unusual language to the point that when the reviewers from the American College of radiation oncology, they made the comment "...this VA radiation oncology Department is under the control of the University of Pennsylvania..."
http://veterans.senate.gov/hearings.cfm?action=release.display&release_id=7e9c17d6-7f17-42fa-9d7d-c803912c40bf

13. In light of the Undersecretary's testimony, the plaintiff became concerned that despite the VA's letter to veterans advising them to file a standard form 95, that if they chose to pursue a claim under the Federal Tort Claims Act, that the health care providers were not acting as Federal employees, at the time that

they provided treatment to Rev. Flippin. In order to investigate this issue, a Freedom of Information Act request was sent to Under Secretary Cross:

Thank you for taking the time to meet with Rev. Flippin, during your recent visit to the Philadelphia VA. In light of your testimony, I have certain concerns about the employment status of the physicians, and other possible nonfederal defendants, who might have been involved with Rev. Flippin's medical care.

This issue is particularly pressing, given the fact that independent contractors might be entitled to raise a statute of limitations, which may differ from the statute of limitations, for the United States, and that filing a Standard Form 95, or a claim for section 1151 benefits, would not toll the statute of limitations as to those defendants. Therefore, I would like to know the names and addresses of all of the physicians, and any of the entities who employed those physicians, who were not Federal employees acting within the scope of their employment, at the time that they treated Rev. Flippin.

Pursuant to the Freedom of Information Act, I request copies of the following documents:

1. The report which you referred to during your testimony, on June 29, 2009 at the Philadelphia VA which indicated that the Philadelphia brachytherapy program was under the control of the University of Pennsylvania.
2. The contract or contracts, for the provision of brachytherapy services at the Philadelphia VA from 2001 to the present. During your testimony you indicated that the terms of the contract differed substantially from other contracts that the VA has used with outside contractors.
3. Copies of any correspondence between the Department of Veterans Affairs and the University of Pennsylvania concerning

brachytherapy services at the Philadelphia VA from 2002 to the present.

4. Copies of any requests for bids or proposals, and correspondence from potential bidders, for brachytherapy services at the Philadelphia VA from 2002 to the present.

Pursuant to the terms of the Freedom of Information Act, I agree to be responsible for the costs of these materials, in accordance with the Department of Veterans Affairs' schedule for complying with Freedom of Information Act requests. In the event that it is more convenient, I'm willing to accept these items in PDF format on a disc or by e-mail. Please provide these items within 30 days of the receipt of this letter. I would hope that in light of the current investigation into this issue, that these items are readily accessible to you and that I will receive them sooner than the Freedom of Information Act's 30 day standard for an agency to respond to a request.

In the event that you require further information, in order to complete this request, or require prepayment of your fees, please either call me, or send a fax to me, at the above numbers. As you indicated that you did not expect to remain in this position, I hope that you find a new position, which will be both personally and professionally rewarding.

(Exhibit#6)

14. The defendant has not provided the documents and more than twenty business days have passed since August 14, 2009 and the Department of Veterans Affairs has not requested an extension of time to comply with this request.

15. Plaintiff has exhausted the applicable administrative remedies.

16. Defendant Department of Veterans Affairs has wrongfully withheld the requested records from Plaintiff.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

17. Plaintiff repeats and realleges paragraphs 1-16.

18. The Department of Veterans Affairs has wrongfully withheld agency records requested by Plaintiff by failing to comply with the statutory time limit for the processing of FOIA requests.

19. Plaintiff has exhausted the applicable administrative remedies with respect to the Department of Veterans Affairs' wrongful withholding of the requested records.

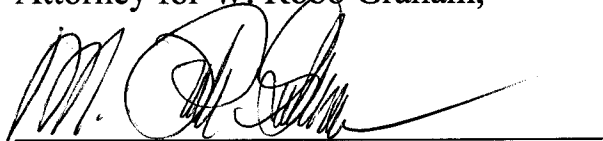
20. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

WHEREFORE, Plaintiff requests that this Court:

- A. Order Defendant Department of Veterans Affairs to process immediately the requested records in their entirety;
- B. Order Defendant Department of Veterans Affairs upon completion of such processing, to disclose the requested records in their entirety and make copies available to Plaintiff
- C. Provide for expeditious proceedings in this action;
- D. Award Plaintiff its costs and reasonable attorneys fees incurred in this action; and
- E. Grant such other relief as the Court may deem just and proper.

LAW OFFICES OF W. ROBB GRAHAM, LLC

Attorney for W. Robb Graham,

A handwritten signature in black ink, appearing to read 'W. Robb Graham', is written over a horizontal line.

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Dated: September 17, 2009